

Calendar No. 559

106TH CONGRESS
2D SESSION**S. 1902**

To require disclosure under the Freedom of Information Act regarding certain persons and records of the Japanese Imperial Army in a manner that does not impair any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes.

 IN THE SENATE OF THE UNITED STATES

NOVEMBER 10, 1999

Mrs. FEINSTEIN (for herself, Mr. WELLSTONE, Mr. GRAMS, Mrs. BOXER, Mr. LEVIN, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MAY 18, 2000

Reported by Mr. HATCH, with an amendment

[Insert the part printed in italic]

A BILL

To require disclosure under the Freedom of Information Act regarding certain persons and records of the Japanese Imperial Army in a manner that does not impair any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Japanese Imperial
3 Army Disclosure Act”.

4 **SEC. 2. ESTABLISHMENT OF JAPANESE IMPERIAL ARMY**
5 **RECORDS INTERAGENCY WORKING GROUP.**

6 (a) DEFINITIONS.—In this section:

7 (1) AGENCY.—The term “agency” has the
8 meaning given such term under section 551 of title
9 5, United States Code.

10 (2) INTERAGENCY GROUP.—The term “Inter-
11 agency Group” means the Japanese Imperial Army
12 Records Interagency Working Group established
13 under subsection (b).

14 (3) JAPANESE IMPERIAL ARMY RECORDS.—The
15 term “Japanese Imperial Army records” means clas-
16 sified records or portions of records that pertain to
17 any person with respect to whom the United States
18 Government, in its sole discretion, has grounds to
19 believe ordered, incited, assisted, or otherwise par-
20 ticipated in the experimentation and persecution of
21 any person because of race, religion, national origin,
22 or political option, during the period beginning Sep-
23 tember 18, 1931, and ending on December 31,
24 1948, under the direction of, or in association
25 with—

26 (A) the Japanese Imperial Army;

1 (B) any government in any area occupied
2 by the military forces of the Japanese Imperial
3 Army;

4 (C) any government established with the
5 assistance or cooperation of the Japanese Impe-
6 rial Army; or

7 (D) any government which was an ally of
8 the Imperial Army of Japan.

9 (4) RECORD.—The term “record” means a Jap-
10 anese Imperial Army record.

11 (b) ESTABLISHMENT OF INTERAGENCY GROUP.—

12 (1) IN GENERAL.—Not later than 60 days after
13 the date of enactment of this Act, the President
14 shall establish the Japanese Imperial Army Records
15 Interagency Working Group, which shall remain in
16 existence for 3 years after the date the Interagency
17 Group is established.

18 (2) MEMBERSHIP.—The President shall appoint
19 to the Interagency Group individuals whom the
20 President determines will most completely and effec-
21 tively carry out the functions of the Interagency
22 Group within the time limitations provided in this
23 section, including the Historian of the Department
24 of State, the Archivist of the United States, the
25 head of any other agency the President considers ap-

1 appropriate, and no more than 3 other persons. The
2 head of an agency appointed by the President may
3 designate an appropriate officer to serve on the
4 Interagency Group in lieu of the head of such agen-
5 cy.

6 (3) INITIAL MEETING.—Not later than 90 days
7 after the date of enactment of this Act, the Inter-
8 agency Group shall hold an initial meeting and begin
9 the functions required under this section.

10 (c) FUNCTIONS.—Not later than 1 year after the date
11 of enactment of this Act, the Interagency Group shall, to
12 the greatest extent possible consistent with section 3 of
13 this Act—

14 (1) locate, identify, inventory, recommend for
15 declassification, and make available to the public at
16 the National Archives and Records Administration,
17 all classified Japanese Imperial Army records of the
18 United States;

19 (2) coordinate with agencies and take such ac-
20 tions as necessary to expedite the release of such
21 records to the public; and

22 (3) submit a report to Congress, including the
23 Committee on Government Reform and Oversight of
24 the House of Representatives *and the Senate Com-*
25 *mittee on the Judiciary*, describing all such records,

1 the disposition of such records, and the activities of
2 the Interagency Group and agencies under this sec-
3 tion.

4 (d) FUNDING.—There are authorized to be appro-
5 priated such sum as may be necessary to carry out the
6 provisions of this Act.

7 **SEC. 3. REQUIREMENT OF DISCLOSURE OF RECORDS.**

8 (a) RELEASE OF RECORDS.—

9 (1) IN GENERAL.—Subject to paragraphs (2),
10 (3), and (4), the Japanese Imperial Army Records
11 Interagency Working Group shall release in their en-
12 tirety Japanese Imperial Army records.

13 (2) EXCEPTION FOR PRIVACY.—An agency head
14 may exempt from release under paragraph (1) spe-
15 cific information, that would—

16 (A) constitute a clearly unwarranted inva-
17 sion of personal privacy;

18 (B) reveal the identity of a confidential
19 human source, or reveal information about the
20 application of an intelligence source or method,
21 or reveal the identity of a human intelligence
22 source when the unauthorized disclosure of that
23 source would clearly and demonstrably damage
24 the national security interests of the United
25 States;

1 (C) reveal information that would assist in
2 the development or use of weapons of mass de-
3 struction;

4 (D) reveal information that would impair
5 United States cryptologic systems or activities;

6 (E) reveal information that would impair
7 the application of state-of-the-art technology
8 within a United States weapon system;

9 (F) reveal actual United States military
10 war plans that remain in effect;

11 (G) reveal information that would seriously
12 and demonstrably impair relations between the
13 United States and a foreign government, or se-
14 riously and demonstrably undermine ongoing
15 diplomatic activities of the United States;

16 (H) reveal information that would clearly,
17 and demonstrably impair the current ability of
18 United States Government officials to protect
19 the President, Vice President, and other offi-
20 cials for whom protection services are author-
21 ized in the interest of national security;

22 (I) reveal information that would seriously
23 and demonstrably impair current national secu-
24 rity emergency preparedness plans; or

1 (J) violate a treaty or other international
2 agreement.

3 (3) APPLICATIONS OF EXEMPTIONS.—

4 (A) IN GENERAL.—In applying the exemp-
5 tions provided in subparagraphs (B) through
6 (J) of paragraph (2), there shall be a presump-
7 tion that the public interest will be served by
8 disclosure and release of the records of the Jap-
9 anese Imperial Army. The exemption may be
10 asserted only when the head of the agency that
11 maintains the records determines that disclo-
12 sure and release would be harmful to a specific
13 interest identified in the exemption. An agency
14 head who makes such a determination shall
15 promptly report it to the committees of Con-
16 gress with appropriate jurisdiction, including
17 the Committee on the Judiciary of the Senate
18 and the Committee on Government Reform and
19 Oversight of the House of Representatives.

20 (B) APPLICATION OF TITLE 5.—A deter-
21 mination by an agency head to apply an exemp-
22 tion provided in subparagraphs (B) through (I)
23 of paragraph (2) shall be subject to the same
24 standard of review that applies in the case of

1 records withheld under section 552(b)(1) of title
2 5, United States Code.

3 (4) LIMITATION ON EXEMPTIONS.—

4 (A) IN GENERAL.—The exemptions set
5 forth in paragraph (2) shall constitute the only
6 grounds pursuant to which an agency head may
7 exempt records otherwise subject to release
8 under paragraph (1).

9 (B) RECORDS RELATED TO INVESTIGATION
10 OR PROSECUTIONS.—This subsection shall not
11 apply to records—

12 (i) related to or supporting any active
13 or inactive investigation, inquiry, or pros-
14 ecution by the Office of Special Investiga-
15 tions of the Department of Justice; or

16 (ii) solely in the possession, custody,
17 or control of the Office of Special Inves-
18 tigations.

19 (b) INAPPLICABILITY OF NATIONAL SECURITY ACT
20 OF 1947 EXEMPTION.—Section 701(a) of the National
21 Security Act of 1947 (50 U.S.C. 431) shall not apply to
22 any operational file, or any portion of any operational file,
23 that constitutes a Japanese Imperial Army record under
24 this Act.

1 **SEC. 4. EXPEDITED PROCESSING OF FOIA REQUESTS FOR**
2 **JAPANESE IMPERIAL ARMY RECORDS.**

3 For purposes of expedited processing under section
4 552(a)(6)(E) of title 5, United States Code, any person
5 who was persecuted in the manner described in section
6 2(a)(3) and who requests a Japanese Imperial Army
7 record shall be deemed to have a compelling need for such
8 record.

9 **SEC. 5. EFFECTIVE DATE.**

10 The provisions of this Act shall take effect on the
11 date that is 90 days after the date of enactment of this
12 Act.

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